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SUPREME COURT, U.S.

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Supreme Court of the United States

OCTOBER TERM, 1972

NO. 73-401

FRANK GUY MITCHELL, *Petitioner*
v.
THE STATE OF TEXAS, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE TEXAS COURT OF CRIMINAL APPEALS

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Supreme Court of the United States

OCTOBER TERM, 1972

NO._____

FRANK GUY MITCHELL, *Petitioner*

v.

THE STATE OF TEXAS, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE TEXAS COURT OF CRIMINAL APPEALS

Petitioner, Frank Guy Mitchell, prays that a Writ of Certiorari issue to review the judgment of the Texas Court of Criminal Appeals entered in this case on the 6th day of June, 1973 affirming Petitioner's conviction and denying Petitioner's Application for leave to file Motion for Rehearing.

CITATION TO OPINION BELOW

The opinion of the Texas Court of Criminal Appeals is reprinted in Appendix A hereto, infra p. 11, and is reported in 494 S.W.2d 865.

JURISDICTION

The Texas Court of Criminal Appeals affirmed the State District Court conviction on May 16, 1973. Petitioner's Application for Leave to File Motion for Rehearing was denied June 6, 1973. Jurisdiction of the

Supreme Court is invoked under the authority of 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

Does the principle of *Burgett v. Texas* apply only to cases in which there is proof of indigency at the time of the prior counseless conviction?

Whether the enhancement of Petitioner's punishment to life imprisonment by the use of a prior conviction, obtained at a time Petitioner was not represented by counsel and did not waive counsel, violated Petitioner's Sixth Amendment right to counsel and Fourteenth Amendment rights to due process and equal protection of the law?

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in part:

> "In all criminal prosecutions the accused shall enjoy the right * * * to have the assistance of counsel for his defense."

The Fourteenth Amendment to the United States Constitution provides in part:

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF FACTS

Petitioner was charged with the primary offense of Theft from the Person, ordinarily punishable by a maximum prison term of seven years (Art. 1437 Texas Penal Code). The indictment alleged two prior felony convictions, thus making a life sentence mandatory upon find-

ings of guilt of the primary offense, and that Petitioner had been so convicted.[1]

At a bifurcated trial[2], a jury found Petitioner guilty of the primary offense. At the punishment hearing, Petitioner objected to the introduction of documentary evidence of the first prior conviction, and out of the jury's presence testified that at the time he pled guilty in that case he had no attorney and was not advised of his right to an attorney nor of his right to a jury trial, nor did he waive counsel.[3]

---

1. Article 63, Texas Penal Code, The Texas Recidivist Statute, provides:

"Whoever shall have been three times convicted of a felony less than capital shall on such third conviction be imprisoned for life in the penitentiary."

2. Pursuant to Article 37.07, Texas Code of Criminal Procedure, the issue of guilt or innocence is first presented to the jury. If the defendant is found guilty, the issue of punishment, including enhancement, is then presented to either the judge or the same jury. In this case the Petitioner chose the jury.

3. The entire transcript of Petitioner's testimony is as follows:

"BY MR. GILLELAND: (Defense counsel)

Q. You are Frank Guy Mitchell?

A. Yes, I am.

Q. Okay. You are the same Frank Guy Mitchell who was convicted in Cause Number 5,823 on the 9th day of April, 1956, in Trinity County, Texas, is that correct?

A. Right.

Q. And, Mr. Mitchell, would you tell the Court whether or not you had the benefit of counsel at the time the conviction was entered against you at that particular proceeding?

A. I did not have counsel.

Q. Okay. Where were you in jail at that time?

A. In Groverton, Texas, the county seat of Trinity County.

Q. If anybody advised you at all, who did?

A. There was a man. He was district high sheriff.

Q. The sheriff of Trinity County?

A. Right.

Q. He carried you over and he told you what to do?

A. He told me to go ahead on and plead guilty to the charges and I would be out in a few months.

(Footnote Continued)

The prosecution offered no evidence to refute Petitioner's sworn testimony, but the Court allowed proof of

---

Q. And it's your testimony to this Court that you did not have the benefit and the assistance of counsel at the time you entered your plea of guilty to that charge that we just heretofore referred to?
A. I never talked to but two people. That was the high sheriff and the judge.
Q. And you did enter your plea?
A. Yes, sir.
Q. And you were not advised of your legal rights otherwise?
A. Not the way they do it today, no, sir.
Q. And would you—if you knew you had the right to an attorney, would you have demanded one?
A. My parents was going to get me one. When they knew anything, I was doing my time.
MR. GILLELAND: I will pass the witness.
MR. WOODS: Let me see the record.

CROSS EXAMINATION

BY MR. WOODS: (Prosecutor)

Q. Do you recall the Judge's name?
A. The Judge? I don't know the Judge.
Q. Max Rodgers?
A. I saw it, but I don't know it.
Q. He signed his name Max Rodgers. Would that be the correct name of the judge who administered your sentence?
A. I was just 17 years old then, and that's been a long time. I didn't get to know him personally, just walked up to him. I was in front of him about five or six minutes. I know the high sheriff, because he was a friend of the family and put everybody in jail and all this. Green Evans. I never will forget him.
Q. Did the Judge advise you you had a right to a jury trial?
A. No, sir.
Q. He did not advise you of that?
A. No, sir.
Q. He did not advise you that you did not have to plead guilty?
A. (Shaking head.)
Q. You remember everything but his name, is that correct?
A. Right.
Q. You remember exactly the conversation that transpired?
A. I even remember the day, the day, how the day looked."
(pp. 170-173 Original Record on Appeal)

the prior conviction to go before the jury. The State then introduced a set of documents (commonly called "pen papers") from the Texas Penitentiary concerning Petitioner's first prior conviction containing, among other things, copies of the Judgment and Sentence. The Judgment was a printed form, with blanks partially filled in by typewriter. The part of the Judgment normally used to fill in the Defendant's name and the name of his counsel appears as follows:

> *"This day this cause was called for trial, and the State appeared by her* district *Attorney, and the Defendant* Frank Guy Mitchell *appeared in person, his counsel also being present* _____ * * *."

As indicated, the space provided for defense counsel's name had been left blank.[4]

The jury found that Petitioner had been twice previously convicted as alleged in the indictment and Petitioner was sentenced to life imprisonment.

On appeal to the Texas Court of Criminal Appeals, Petitioner contended that because he did not have counsel at the time of the first conviction, it could not be used to enhance his punishment. The Court of Criminal Appeals held, *inter-alia,* that because "* * * appellant had raised no issue of indigency as of the time of the prior trial" his contention was "without merit", and affirmed both the conviction and the life sentence.

---

4. A similar printed judgment form was used in the other prior enhancement convictions (9 concurrent convictions) and in each judgment the name of C. C. Devine, a Houston lawyer, is typed in.

ARGUMENT

TEXAS WRONGFULLY LIMITS THE APPLICATION OF *BURGETT v. TEXAS* TO CASES OF INDIGENCY. PETITIONER WAS DENIED DUE PROCESS WHEN A VOID UNCOUNSELLED CONVICTION WAS USED TO ENHANCE HIS PUNISHMENT TO LIFE IMPRISONMENT.

Burgett v. Texas, 389 U.S. 109, 196 L.Ed.2d 319, 88 S.Ct. 258 (1967) held that a conviction obtained in violation of the right to counsel could not be used to support guilt or to enhance punishment. When *Burgett* was originally presented to the Texas Court of Criminal Appeals (397 S.W.2d 79), no claim was made that he was indigent at the time of his prior counseless conviction, nor was there such claim of indigency made when Burgett was presented to the Supreme Court. Justice Douglas's opinion in *Burgett* does not mention indigency or say that *Burgett* only applies when the defendant was indigent at his counseless conviction. Nonetheless, the Texas Court of Criminal Appeals now limits the application of *Burgett* to cases in which there is a claim of indigency. In *Johnson v. State*, 432 S.W.2d 98, 99 (Tex. Cr. App. 1969) Judge Morrison said:

> "We here observe that for one to secure a favorable holding under *Burgett v. Texas* [supra] it is necessary that a showing of indigency be made."

In *Hudson v. State*, 453 S.W.2d 147, 148 (Tex. Cr. App. 1970) Judge Morrison again said:

> "Appellant went to great length in his effort to establish the absence of counsel in some of the prior convictions, but we have searched the record in vain and fail to find any mention of indigency.

> "*Burgett v. Texas* * * * is based on *Gideon v. Wainwright*, 372 U.S. 335, 9 L. Ed.2d 799, 83 S.Ct. 792 (1963). *Gideon* is bottomed on the premise of indigency. Without such a showing the question is not before us."

In the instant case the Court of Criminal Appeals said:

> "Further, appellant has raised no question of indigency as of the time of the prior trial. * * * We find appellant's contention to be without merit."

Although *Gideon* was most likely indigent at the time of his conviction, his case stands for a broader proposition, the clear and simple constitutional rule that, in the absence of waiver, a felony conviction is invalid if it was obtained in a court that denied the defendant the help of a lawyer. *Gideon v. Wainwright*, supra; *Loper v. Beto*, 405 U.S. 473, 31 L.Ed.2d 374, 92 S.Ct. 1014 (1972).

In *United States v. Tucker*, 404 U.S. 443, 30 L.Ed.2d 592, 92 S.Ct. 589 (1972), Justice Stewart said:

> "The *Gideon* case established an unequivocal rule 'making it unconstitutional to try a person for a felony in a state court unless he had a lawyer or had validly waived one' *Burgett v. Texas* * * * . In *Burgett* we said that '(t)o permit a conviction obtained in violation of *Gideon v. Wainwright* to be used against a person either to support guilt or enhance punishment for another offense * * * is to erode the principle of that case.' " 404 U.S. at p. 449

Texas seriously erodes *Gideon*, and *Burgett* when it requires a showing of indigency at the time of the prior conviction. Yet one must strain to imagine a more flagrant

case of denial of counsel than is present here: A seventeen year old black man is held in jail until he is brought before the court by the "high sheriff" of a rural, deep East Texas county and told "to go ahead on and plead guilty to the charges"; he is not advised of his right to a jury trial nor that he did not have to plead guilty; he is before the judge no more than five or six minutes; although his family had planned to obtain an attorney for him, his plea and sentence were rushed through before they were successful:

> "My parents were going to get me one. When they knew anything, I was doing my time."

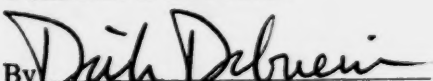
Petitioner "suffered anew" from this deprivation when his punishment was increased from a maximum of seven years to a mandatory life sentence. The Supreme Court should reverse his sentence and remand the case to the Texas Court of Criminal Appeals.

CONCLUSION

For the reasons stated the Supreme Court should reverse the sentence and remand the case to the Texas Court of Criminal Appeals.

Respectfully submitted,

FOREMAN & DeGUERIN

By 
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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Petition for Writ of Certiorari have been furnished the Office of the Harris County, Texas District Attorney by placing them in the United States Mail, postage prepaid, certified mail with return receipt requested, this 31 day of September, 1973.

Dick DeGuerin

APPENDIX

FRANK GUY MITCHELL, Appellant,
v.
THE STATE OF TEXAS, Appellee.

No. 46041.

Court of Criminal Appeals of Texas.
May 16, 1973.

Rehearing Denied June 6, 1973.

Foreman & DeGuerin, Houston, for appellant.

Carol S. Vance, Dist. Atty., Phyllis Bell and Ronald G. Woods, Asst. Dist. Attys., Houston, Jim D. Vollers, State's Atty., and Robert A. Huttash, Asst. State's Atty., Austin, for the State.

OPINION

ROBERTS, Judge.

The conviction is for the offense of felony theft; punishment was enhanced under Article 63, V.A.P.C., and appellant was assessed life imprisonment.

Two grounds of error are alleged. Appellant first contends that a prior felony conviction used for enhancement purposes was obtained when appellant was not represented by counsel. Appellant concludes, therefore, that reversible error was committed.

[1] Appellant testified that he was not advised of his right to an attorney at this prior trial. Yet the judgment in that cause recites that "Frank Guy Mitchell appeared in person, his counsel also being present . . . ." Further,

appellant has raised no issue of indigency as of the time of the prior trial. See Lott v. State, 480 S.W.2d 743 (Tex. Cr. App. 1972); Hudson v. State, 453 S.W.2d 147 (Tex. Cr. App. 1970). We find appellant's contention to be without merit.

In his final ground, appellant brings forth the argument that the trial court erred in overruling his motion for new trial, there being newly discovered evidence of his innocence. At the hearing on the motion, witnesses placed appellant in Trinity, Texas, on the day of the offense, at approximately 9:30 to 10:00 a.m., between 1:30 and 2:00 p.m., and about 4:00 p.m., the same day. Another witness testified that she lived in the apartment house where the robbery took place and saw the victim enter and exit the apartment where the offense occurred, but did not see appellant.

The State's evidence showed the robbery to have taken place around 11:30 a.m., in Houston. Unrefuted evidence was presented at the hearing that Trinity, Texas, is located some 50 miles from Houston. We can take judicial knowledge of the fact that this figure is an under-estimate. Nevertheless, the appellant has failed to negate the State's theory of guilt.

Also, none of the four witnesses who testified at the hearing on the motion for new trial were subpoenaed for the actual trial. Two of the witnesses' testimony indicated that, though they observed appellant on the day of the offense, he did not know they saw him. Thus, appellant alleges that he could not have known of their availability to him as witnesses. Without reaching the merits as to whether, using due diligence, appellant could have dis-

covered these two witnesses prior to trial,[1] we note that appellant does not even advance a claim that he did not know about the remaining two witnesses, nor that he could not have subpoenaed them for the trial. In fact, the testimony of the witness who placed appellant in Trinity between 9:30 and 10:00 indicates that she was in appellant's presence for approximately twenty minutes.

[2] Appellant has failed to demonstrate that the "new" evidence was not known to him at the time of trial; even if we accept the allegation in appellant's brief that it was unknown to him, he has not shown that such a failure to know of the evidence was not due to a want of diligence on his part. Huffman v. State, 479 S.W.2d (Tex. Cr. App. 1972).

The judgment is affirmed.

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1. The record reflects that this cause was reset five times prior to the date of trial.

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IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1973

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NO. 73-401

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FRANK GUY MITCHELL,

Petitioner

VS.

THE STATE OF TEXAS,

Respondent

• • •

On Petition for Writ of Certiorari
to the Court of Criminal
Appeals of Texas

• • •

RESPONDENT'S BRIEF IN OPPOSITION

• • •

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO. 73-401

FRANK GUY MITCHELL,

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V.

THE STATE OF TEXAS,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL
APPEALS OF TEXAS

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the Court of Criminal Appeals of Texas, for which review is sought here, is reported in *Mitchell v. State*, 494 S.W. 2d 865 (1973). A copy of the opinion is attached to the petition herein.

JURISDICTION

The formal jurisdictional requisities of the petition and its timely filing would appear to be satisified, although Respondent disputes Petitioner's contention that any rights guaranteed by the Constitution of the United States have been denied.

QUESTIONS PRESENTED

Respondent disagrees with the Questions Presented by Petitioner because they assume facts which do not appear in the record, namely that there is proof of indigency of Petitioner at his prior conviction and that Petitioner was not represented by counsel at the time of his prior conviction.

Respondent asserts that the following two questions should constitute the Questions presented in this cause:

1. Does the principle of *Burgett v. Texas* apply to cases in which there is a lack of a proof of indigency at the time of the prior counseless conviction?

2. Whether the prior conviction complained of was actually obtained at a time when Petitioner was not represented by counsel and did not waive counsel, and thereby denied Petitioner's Sixth Amendment right to counsel and Fourteenth Amendment rights to due process and equal protection of the law?

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner contends that the Sixth and Fourteenth Amendment to the United States Constitution are involved here.

STATEMENT OF THE CASE

Petitioner was indicted as an habitual criminal and charged with the offense of theft from the person. He entered a plea of not guilty before a jury in the 176th District Court of Harris County, Texas, and was found guilty as charged in the indictment. Thereafter, the same jury heard evidence on the enhancement allegations of the indictment and found that Petitioner was the same person who had been convicted twice before of felonies as alleged in the indictment. The court assessed punishment as required by law at confinement in the Texas Department of Corrections for life.

At the punishment stage of Petitioner's trial, Petitioner objected to the introduction of evidence of first prior conviction because he contended that he had no attorney in that case at the time he pled guilty and that he was not advised of his right to an attorney. The petition herein contains an accurate reproduction of Petitioner's testimony at page 3 of the petition.

The State then introduced "pen papers" from the Texas Department of Corrections. Those papers contained copies of the judgment and sentence in Petitioner's first prior conviction. That judgment affirmatively states that the "defendant, Frank Guy Mitchell, appeared in person, his counsel also being present . . . " A copy of this judgment appears in Appendix A of Respondent's Brief in Opposition.

On appeal, the Court of Criminal Appeals of Texas held that "the judgment in that cause [Petitioner's first prior conviction] recites that 'Frank Guy Mitchell appeared in person, his counsel also being present . . . ' Further, appel-

lant has raised no issue of indigency as of the time of the prior trial" and his contention is "without merit."

ARGUMENT AND AUTHORITIES

1. The principle of Burgett v. Texas does not apply to cases in which there is a lack of a proof of indigency at the time of the prior counseless conviction.

The record does not reflect that Petitioner ever testified that he was indigent and unable to secure counsel at the time of his first prior conviction. Petitioner does not now advance such a claim of indigency.

Since there is in the instant case no proof of Petitioner's indigency at the time of his first prior conviction, the court which heard that case should not be considered to have denied an indigent defendant the help of an attorney.

Petitioner seeks to have this Court apply the principle of *Burgett v. Texas*, 389 U.S. 109 (1967), to cases which do not involve an indigent defendant. To do this would be to misread and to misapply the test set out in *Burgett* concerning the right to counsel. The Court in *Burgett* held that "*Gideon v. Wainwright* established the rule that the right to counsel guaranteed by the Sixth Amendment was applicable to the States by virtue of the Fourteenth Amendment, making it unconstitutional to try a person for a felony in a state court unless he had a lawyer or had validly waived one." *Burgett v. Texas*, 389 U.S. 109 (1967).

Two tests are thus established by the *Burgett* interpretation of *Gideon*: a person must (1) have had a lawyer or (2) have validly waived one.

It is logical to limit the *Burgett* principle to indigent defendants because by so doing the courts are able to comply with the first test set out in the *Burgett* interpretation of *Gideon*, i. e., that the defendant had a lawyer. Implicit in the concept of "having a lawyer" is the concept of having the ability to pay for a lawyer. If the defendant cannot pay for a lawyer's services, he cannot have a lawyer unless the court appoints one for him.

It is essential that the court know that a defendant cannot afford a lawyer, so that a lawyer may be appointed. If the defendant never raises the issue of his indigency, of his inability to hire a lawyer, the court should not be held to have violated his constitutional rights by not appointing him a lawyer. If defendants were to receive court-appointed counsel without a showing of indigency, defendants who could afford to retain counsel could avoid having to do so simply by remaining silent as to their financial condition.

The Court of Criminal Appeals of Texas was correct therefore, in holding that the rule of *Burgett* applies only to indigent defendants:

> "*Burgett v. Texas* . . . is based on *Gideon v. Wainwright* . . . Gideon is bottomed on the premise of indigency. Without such a showing, the question [of absence of counsel] is not before us." *Hudson v. State*, 453 S.W. 2d 147, 148 (Tex.Crim., 1970).

The Court of Criminal Appeals of Texas has repeatedly held that in order to secure a favorable ruling under *Burgett*, it is necessary that a showing of indigency be made. *Walling v. State*, 437 S.W. 2d 563, (Tex.Crim., 1969); *Lott v. State*, 480 S.W. 2d 743 (Tex.Crim., 1972).

Petitioner's proposed "simple constitutional rule"—that, in the absence of waiver, a felony is invalid if it was obtained in a court that denied the defendant the help of a lawyer—ignores the fact that the court cannot deny the defendant an attorney if he is indigent and that the defendant can retain counsel if he is not indigent.

2. A prior conviction used to enhance Petitioner's punishment to life imprisonment was obtained at a time when Petitioner was represented by counsel and did not thereby deny Petitioner's Sixth Amendment right to counsel and Fourteenth Amendment rights to due process and equal protection of the law.

Petitioner contends that a prior felony conviction, which he alleges was void because he was not represented by counsel, was improperly used to enhance his punishment under Article 63, P. C. It is respectfully submitted that the record fails to support Petitioner's contention.

The prior conviction about which complaint is made and which was alleged in the enhancement count in the indictment was a conviction obtained in Cause No. 5823, obtained on April 9, 1956, in the 12th District Court of Trinity County, Texas. The judgment and sentence entered in that cause were introduced into evidence at the punishment stage of Petitioner's trial. That judgment affirmatively states that the "defendant Frank Guy Mitchell appeared in person, his counsel also being present . . . " Petitioner contends, however, that because the name of his counsel in Cause No. 5823 was not inserted in the judgment that the same is void on its face.

Petitioner relies on *Burgett v. Texas*, 389 U.S. 109 (1967), to support his claim of error. Petitioner's reliance

on the ruling in *Burgett* is misplaced in the light of the record in the instant case. In *Burgett*, the use of the prior conviction was banned because it was presumptively void on its face. The first version of the prior conviction in *Burgett* recited that the defendant appeared "in proper person and without counsel." The second version of the same prior conviction which was admitted to evidence stated that the petitioner appeared "in proper person" but did not contain the additional words, "without counsel." In the instant case, on the contrary, the judgment in the prior conviction used for enhancement affirmatively, states that "defendant appeared in person, his counsel also being present." Such a judgment is not presumptively void on its face as is required for the application of the *Burgett* rule. There is nothing in *Burgett* to suggest that the counsel for defendant, who was thus shown to be present, must be named in the judgment.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

JOHN L. HILL
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CERTIFICATE OF SERVICE

I, John Pierce Griffin, Assistant Attorney General of Texas, do hereby certify that a copy of the above and foregoing Respondent's Brief in Opposition has been deposited in the United States mail, postage prepaid, certified, on this the _____ day of December, 1973, addressed as follows: Mr. Dick DeGuerin, Foreman & DeGuerin, 512 1st National Life Bldg., Houston, Texas 77002.

JOHN PIERCE GRIFFIN
Assistant Attorney General

THE STATE OF TEXAS

vs.

FRANK GUY MITCHELL

IN THE DISTRICT COURT

No. 5827 TRINITY County.

Charge BURGLARY

Date APRIL 9th 1956

This day this cause was called for trial, and the State appeared by her district Attorney, and the Defendant Frank Guy Mitchell appeared in person, his counsel also being present

and the Defendant Frank Guy Mitchell having been duly arraigned in open court, both parties announced ready for trial, and the Defendant

in open Court, in person, pleaded guilty to the charge contained in the indictment; thereupon the said Defendant was admonished by the Court of the consequences of said plea, and the said Defendant persisted in pleading guilty; and it plainly appearing to the Court that the said Defendant is sane, and that he is uninfluenced in making said plea by any consideration of fear, or by any persuasion or delusive hope of pardon, prompting him to confess his guilt, the said plea of guilty is by the Court received, and here now entered of record upon the minutes of the Court as the plea herein of said Defendant; thereupon a Jury of good and lawful men, to-wit: was waived and the Cause submitted to and eleven others was duly selected, impaneled and sworn, who, having heard the indictment read, and the Defendant's plea of GUILTY thereto, and having heard the evidence submitted, and having been duly charged by the Court, retired in charge of the proper officer to consider of their verdict, and afterwards was brought into open Court by the proper officer, the Defendant and his counsel being present, and in due form of law returned into open Court the following verdict, which was received by the Court and is here now entered upon the minutes of the Court, towit: to the Court; Whereupon the Court having heard the pleadings and the evidence offered is of the opinion therefrom that thedefendant is guilty of the offense charged against him

/s/ Max M. Rogers

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED BY THE COURT, That the Defendant Frank Guy Mitchell is guilty of the offense of Burglary as confessed by him in his said plea of GUILTY herein made and as found by the Court, and that he be punished by confinement in the State penitentiary for a term of Two years

and that the State of Texas do have and recover of the said Defendant Frank Guy Mitchell all costs in this prosecution expended, for which execution will issue.